IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

WEDNESDAY, THE 3RD DAY OF AUGUST 2022 / 12TH SRAVANA, 1944

WA NO. 760 OF 2022

AGAINST THE JUDGMENT DTD 9.6.2022 IN WP(C) 15520/2022 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS:

1 KENDRIYA VIDYALAYA SANGATHAN
REPRESENTED BY ITS COMMISSIONER
KENDRIYA VIDYALAYA SANGATHAN
18 INSTITUTIONAL AREA
SHAHEED JEET SINGH MARG
NEW DELHI - 110016

2 THE DEPUTY COMMISSIONER,
KENDRIYA VIDYALAYA SANGATHAN
REGIONAL OFFICE, IGH ROAD, KADAVANTHARA
ERNAKULAM - 682020

3 THE PRINCIPAL,
KENDRIYA VIDYALAYA RUBBER BOARD
RUBBER BOARD P.O., KOTTAYAM
KERALA - 686009

BY ADV S.MANU, ASGI

RESPONDENT/PETITIONER:

ELNA CHINCHU, AGED 7 YEARS (MINOR)
D/O. CHINCHU THOMAS,
REPRESENTED BY HER FATHER, CHINCHU THOMAS
AGED 34 YEARS, S/O. THOMAS AS HER LAWFUL
GUARDIAN FOR AND ON BEHALF OF THE MINOR,
RESIDING AT MANNIKUNNEL HOUSE, PUNNATHURA E.P.O
KIDANGOOR, KOTTAYAM DISTRICT,
KERALA, PIN - 686583

BY ADV GEORGE T.J

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON 03.08.2022, ALONG WITH WA.771/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

WEDNESDAY, THE 3RD DAY OF AUGUST 2022 / 12TH SRAVANA, 1944

WA NO. 771 OF 2022

AGAINST THE JUDGMENT DTD 9.6.2022 IN WP(C) 15261/2022 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS:

1 UNION OF INDIA
REPRESENTED BY THE SECRETARY
MINISTRY OF EDUCATION, SHASTRI BHAVAN
NEW DELHI - 110001

2 KENDRIYA VIDYALAYA SANGATHAN
INSTITUTIONAL AREA, S.J. MARG
NEW DELHI - 110016

3 THE PRINCIPAL,
KENDRIYA VIDYALAYA
EDAT, PAYYANNUR, PIN - 670 327.

BY ADV S.MANU

RESPONDENT/PETITIONER:

DHRUV SAI KIRAN (MINOR), AGED 6,
REPRESENTED BY HIS LEGAL GUARDIAN AND
FATHER SAI KIRAN K.P., S/O K.P. VIJAYAN,
RESIDING AT SAI VIHAR, ANNUR, PAYYANNUR
KANNUR, PIN - 670307,
PRESENTLY WORKING AS SPECIAL CORRESPONDENT
THE TIMES OF INDIA, THIRUVANANTHAPURAM.

BY ADV B.G.HARINDRANATH

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON 03.08.2022, ALONG WITH WA.760/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R."

P.B.SURESH KUMAR & C.S.SUDHA, JJ.

W.A.Nos.760 and 771 of 2022

Dated this the 3rd day of August, 2022

J U D G M E N T

C.S.Sudha, J.

What is the *locus standi* of a beneficiary to a privilege granted to a functionary of the State, to challenge the withdrawal of the privilege by the Government or the very same authority which granted it, when the functionary on whom the privilege was conferred, has no grievance ? Can the beneficiary be said to have a legitimate expectation on invoking the privilege granted and claim it as a matter of right ?

2. These writ appeals are against the common judgment dated 09/06/2022 in W.P.(C)Nos.15520/2022 and 15261/2022 respectively. The appellants in both the appeals are respondents 1 to 3 respectively in the writ petitions and the respondents herein, the petitioners in the writ petitions. Parties in these appeals and the documents will be referred to as described in the writ petitions.

3. **W.P.(C)No.15520/2022** was filed by the father, on behalf of his minor child who sought admission in Class-II of the respondents' School for the academic year 2022-2023. It is alleged that on the basis of the assurance given by the respondents that the petitioner would be admitted in the School of the respondents, she had applied for Transfer Certificate from the School where she was studying and submitted the same along with the application for admission submitted to the respondents. According to the petitioner, when Ext.P1 application along with Ext.P2 T.C. and connected records were submitted, the respondents confirmed her admission by allotting a unique ID number to her. Pursuant to the same, the school uniform, text books, and other required items for studying in the Kendriya Vidyalaya as per the instructions of the respondents were purchased. However when the petitioner tried to remit the school fees on 29/04/2022, i.e., a day before the last date on 30/04/2022, the payment could not be effected as the payment link of the fee portal was blocked by the respondents. When the petitioner contacted the respondents seeking help for the remittance of the school fees, she was informed by the latter that the admission has been cancelled by the school authorities on the basis of some Government order, the details of which they refused to disclose. The action of the respondents in rejecting the admission

which had already been given and confirmed by creating a unique ID, is totally unreasonable, unjust and an irreparable loss to the petitioner. The petitioner had acted on the instructions of the respondents and had taken TC from the erstwhile school and complied with all the formalities as per the directions of the respondents. The act of the respondents in cancelling the admission at the fag end of the admission procedure, without prior notice and also without assigning any reasons whatsoever, is totally unjustified. The petitioner had sent a notice on 29/04/2022 through e-mail to the respondents requesting permission to remit the school fees before 30/04/2022. However, the respondents neither heeded nor responded to the request. Hence, the writ petition.

4. A detailed counter affidavit has been filed by respondents 1 to 3. In the counter affidavit it is contended as follows - The 1st respondent Kendriya Vidyalaya Sangathan (KVS) is an autonomous organization registered under the Societies Registration Act, 1860 and fully financed by the Ministry of Education, Government of India (GoI) with the object of catering to the educational needs of children of transferable Central Government employees including defence personnel by providing a common programme of education, to pursue excellence and set the pace in the field of school

education, to initiate and promote innovations and experimentation in the field of education in collaboration with other bodies like CBSE, NCERT and allied bodies and to promote National integration. The Chairman of the KVS is the Union Minister of Education, GoI. The KVS is headed by the Commissioner, who is the Chief Executive of the Sangathan to implement the policies approved by the Board of Governors of KVS. The policies and decisions of KVS are taken by the Board of Governors consisting of eminent educationists and administrators from all over the country. The service conditions of KVS are governed by the Education Code in vogue.

4.1. The GoI, in July 2020, launched the National Education Policy, 2020 (the NEP, 2020). The NEP, 2020, *inter alia* provides that a pupil-teacher ratio (PTR) of under 30:1 is to be ensured at the level of each school and in areas having large number of socio-economically disadvantaged students would aim for a PTR of under 25:1. Based on the policy decisions of the GoI, necessary amendments have been carried out in the admission guidelines in the Kendriya Vidyalayas (KVs) to align it with NEP, 2020. Hence in supersession of all the previous guidelines governing admissions in KVs, the KVS has framed Exts.R3(b) guidelines for admissions for the academic year 2022-2023 onwards. Part B in Ext.R3(b) deals with the special

provisions for admissions in KVs. Under the special provisions, admissions being granted under the discretionary quota over and above the class strength has been discontinued in certain categories, like Members of Parliament (MPs) quota, Chairman, Vidyalaya Management Committee (VMC) quota, children and grandchildren of Members of Parliament quota, children and grandchildren of retired KVS employees quota etc. Prior to the amendment to the guidelines, the Chairman of VMC could recommend two admissions in the KV concerned under his discretionary quota in an academic year. The discretionary quota admission was a cause of serious concern as these admissions were stretching the class strength and adversely impacting the learning process. Due to overcrowding in class rooms, children of transferable central government employees were unable to get admission in KVs on their transfer from one place to another. Further, the KVS has a reservation policy for SC/ST/OBC and also 3% horizontal reservation for the differently abled children.

4.2. The GoI after examining the prevailing scheme of education at length, notified NEP, 2020, whereby a new scheme of pedagogical and curricular restructuring has been proposed. KVS, an autonomous organization under the Ministry of Education, has implemented the said

policy as per the instructions given from time to time by the Ministry of Education. In order to streamline the admission process and also to ensure admission to more deserving students, as per priority, KVS undertook a review of its admission scheme specifically Part-B of the guidelines which provides for admission to students in discretionary quotas. Accordingly, the KVS through its regional offices directed the Principals of all KVs to put on hold all such admission under special provisions till further communication. In the review it was decided to discontinue the discretionary quota given to some of the functionaries mentioned in the guidelines. At the same time, a couple of additions have also been made, the notable one addition being the quota for children orphaned due to Covid-19 in KVs over and above the class strength under PM CARES for Children Scheme. Ext.R3(c) is the OM dated 25/04/2022 issued by the KVS relating to the revised guidelines.

4.3. There was no vacancy in Standard II. The Chairman, VMC, requested the 3rd respondent to consider the admission of the petitioner in Class II for the academic year 2022-2023 under his discretionary quota. The 3rd respondent issued the registration form for admission to Class II under the discretionary quota which was over and above the class strength, though there was no vacancy. However, before the completion of the admission process,

the KVS on 12/04/2022 instructed all Principals to put on hold the admissions under the special provision, including the Chairman's discretionary quota. Accordingly, on 12/04/2022 itself, the petitioner was advised not to proceed with the payment of fees as such admissions had been put on hold. After the issuance of the revised guidelines, the link for fee payment was blocked on 26/04/2022 after informing the parent over phone about the cancellation of the Chairman's quota.

4.4. The petitioner cannot claim a right to get admission in the KV through discretionary quota which has been dispensed with. The discretionary quotas were abolished in public interest to ensure that deserving students are admitted in the KVs as per priority. It is well within the authority of the KVS to fix the criteria for admission. The decision of the respondents to do away with several discretionary quotas in admission, which were being made beyond the approved strength is a revolutionary step taken to streamline admission in KVs and to improve the quality of education. The allotment of seats through discretionary quota system is against the principle of equality and opportunity in public educational institutions. Excessive number of students in the classrooms had adversely affected the quality of education and the teaching-learning environment in the schools. The guidelines were revised

on the basis of the policy of the Government and in larger public interest. Hence the petitioner is not entitled to any of the reliefs prayed for and hence the petition is liable to be dismissed, contended the respondents.

5. **W.P.(C)No.15261/2022** is yet another writ petition filed by the father of another minor child who had sought admission in Class I in the Kendriya Vidyalaya, Edat, Payyannur. According to the petitioner, as per the original guidelines issued by the KVS, the Chairman of the Kendriya Vidyalaya, Edat, Payyannur, had a right to recommend a maximum of two admissions in the KVs concerned under his discretionary quota. Accordingly, the District Collector, Kannur, the Chairman of the KV, issued a letter on 04/03/2022 recommending admission of the petitioner in the Chairman's quota in the 1st Standard for the academic year 2022-2023. The petitioner therefore had a legitimate right to be admitted as per the guidelines issued by the 2nd respondent. However, in supersession of the earlier guidelines, the 2nd respondent issued new guidelines, which took away the Chairman's quota thereby denying the legitimate right of the petitioner. The revised guidelines has been issued after the closure of admissions, thereby affecting the legitimate expectations of the petitioner. The petitioner was unable to apply to any other schools because the admissions had by then been closed. The

petitioner has no other remedy and hence the writ petition.

6. The contentions raised in the counter affidavit filed by the respondents are the same as in the earlier writ petition.

7. The learned Single Judge by the impugned judgment allowed the writ petitions holding that the petitioners had a legitimate expectation that they would be given admission in accordance with the pre-revised guidelines and that the decision taken by the respondents altering the admission guidelines and rules after the process for admission had started is arbitrary, unreasonable, irrational and taken against public interest. Aggrieved, the respondents have come up in appeal.

8. Heard Adv.S.Manu, the learned Assistant Solicitor General of India for the appellants and Adv.B.G.Harindranath and Adv.George T.J., the learned counsel for the respondents.

9. The prayers sought in W.P.(C)No.15520/2022 are -

> *i) to issue a writ of mandamus or other appropriate writ, direction or order directing the respondents to permit the petitioner to remit the school fees or to accept the school fees in any another manner so that the petitioner's ward can continue her studies in the respondents school for the academic year 2022-23 onwards.*
>
> *ii) to issue a writ of mandamus or other appropriate writ, direction or order commanding the 1st respondent to consider Exts.P1 and P2 and pass*

immediate orders to allow the petitioner to deposit the school fees and to allow her to continue her studies in the KV school.

iii) to grant such other reliefs or directions or order as this Hon'ble Court deems fit and proper to grant."

10. The prayers sought in W.P.(C)No.15261/2022 read -

"*(i) issue a writ of certiorari or any other appropriate writ, order or direction quashing Exhibit P5 to the extent that it purports to interfere with the Chairman's right to recommend two students as per Clause (xvii) of Exhibit P2.*

(ii) issue a writ of mandamus or any other appropriate writ or order to the 3rd respondent admitting him to the Class-I for the academic year 2022-23 in Kendriya Vidayalaya, Edat, Payyannur.

(iii) grant such other or further relief as this Hon'ble Court deems fit to grant in the particular facts and circumstances of this case;

(iv) Award costs."

11. A mandamus is available against any public authority including administrative and local bodies. It would lie against any person who is under a duty imposed by a Statute or by common law to do a particular act. To obtain a writ or order like mandamus, the applicant must satisfy that he has a legal right to the performance of a legal duty by the party against whom mandamus is sought and such right must subsist on the date of the petition. A writ of mandamus cannot be granted unless it is established that there is an

existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or to establish a legal right, but to enforce one already established. To maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith. Additionally, the applicant must make a demand which is clear, plain, and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded.

12. In **Rai Shivendra Bahadur (Dr.) v. Governing Body of the Nalanda College, 1962 Supp (2) SCR 144**, the Hon'ble Supreme Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party has a legal right under the statute or rule to enforce it.

13. Certiorari, a Latin expression, means 'to certify' or 'to inform'. According to the common law of England, 'certiorari' is a high prerogative writ issued by the Court of the King's Bench or Chancery to inferior courts or tribunals in the exercise of supervisory jurisdiction with a view to ensure that they acted within the bounds of their jurisdiction. To this end, they were commanded to transmit the records of a cause or matter pending with them to the

superior court to be dealt with there, and if the order was found to be without jurisdiction, it was quashed. The court issuing 'certiorari' to quash, however, could not substitute its own decision on the merits, or give directions to be complied with by the court or the tribunal. Its work was destructive; it simply wiped out the order passed without jurisdiction, and left the matter there. (**K.C.T.Steel Pvt. Ltd. v. State of Kerala, 2016(4) KHC 336**).

14. A Seven - Judge Bench in **Hari Vishnu Kamath v. Ahmad Ishaque, 1955 KHC 345: AIR 1955 SC 233** has delineated the bounds of certiorari. Referring to the decision in **C. Basappa v. T. Nagappa**, **AIR 1954 SC 440** dealing with the question of grant of 'certiorari', held that in granting a writ of 'certiorari' the superior court does not exercise the power of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own view for those of the inferior tribunal. The offending order or proceeding so to say is put out of the way as one which should not be used to the detriment of any person. It is not a proceeding against the tribunal or an individual composing it; it acts on the cause or proceeding in the lower court, and removes it to the superior court for

reinvestigation. The writ for quashing is thus directed against a record, and as a record can be brought up only through human, agency, it is issued to the person or authority whose decision is to be reviewed.

15. A Constitutional Court, while exercising its extraordinary jurisdiction of certiorari, acts as a supervisory body but not as an appellate one. An erroneous adjudication may also be amenable to the command of certiorari, but the resulting error must be one apparent on the face of the record, that is, when the decision is clearly in ignorance of or in disregard for law. Pithily put, a patent error which results in perversity or miscarriage of justice too, is amenable to judicial review. [**K.C.T. Steel** *(Supra)*].

16. As far as the first prayer in W.P.(C)No.15261/2022 is concerned, the question that arises is - what is the *locus standi* of the petitioner to challenge the withdrawal of a privilege granted to the Chairman of VMC, when the Chairman himself has no such grievance. The petitioner is only a beneficiary of a privilege conferred on a functionary of the State. When a specific query was put to the learned counsel for the petitioner as to the *locus standi* of the petitioner to challenge the withdrawal of a privilege granted to another, our attention was drawn to the decision of the Hon'ble Supreme Court in **Confederation of Ex-servicemen Associations v. Union of India,**

(2006) 8 SCC 399. In this decision it has been held that under the doctrine of 'legitimate expectation', a person may have reasonable or legitimate expectation of being treated in a certain way by an administrative authority even though he has no right in law to receive the benefit. In such a situation, if a decision is taken by an administrative authority adversely affecting his interests, he may have justifiable grievance in the light of the fact of continuous receipt of the benefit, legitimate expectation to receive the benefit or privilege which he has enjoyed all throughout. Such expectation may arise either from the express promise or from consistent practice which the applicant may reasonably expect to continue. The expectations may be based on some statement or undertaking by, or on behalf of, the public authority which has the duty of making the decision, if the authority has, through its officers, acted in a way that would make it unfair or inconsistent with good administration for him to be denied such an inquiry. The Apex Court further held that in such cases the Court may not insist an administrative authority to act judicially but may still insist it to act fairly. The doctrine is based on the principle that good administration demands observance of reasonableness and where it has adopted a particular practice for a long time even in the absence of a provision of law, it should adhere to such practice without depriving its

citizens of the benefit enjoyed or privilege exercised.

17. In the case on hand, the argument is that the petitioner had exercised the privilege, that is, on the basis of the recommendation letter given by the Chairman, VMC, she had submitted the application for admission and hence she had derived a legitimate right to be admitted as per the guidelines issued by the 2nd respondent. Here, we refer to the decision submitted by the learned ASG in support of the contentions of the respondents. In **Union of India v. Hindustan Development Corporation, AIR 1994 SC 988,** it has been held that it is generally agreed that legitimate expectation gives the applicant sufficient *locus standi* for judicial review and that the doctrine of legitimate expectation is to be confined mostly to, right of a fair hearing before a decision which results in negativing a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystalised right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision then the decision maker should justify the denial of such expectation by

showing some overriding public interest. Therefore, even if substantive protection of such expectation is contemplated, that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted.

17.1. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfill. The protection is limited to that extent and a judicial review can be within those limits. A person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has a *locus standi* to make such a claim. In considering the same, several factors which give rise to such legitimate expectation must also be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in the public interest. If it is a question of policy, even by change of old policy, the courts cannot interfere with a decision.

18. In Civil Appeal Nos.4178 to 4197 of 2022, the Hon'ble Supreme Court held that, that it is a settled law that an interference with the policy decision by the court would not be warranted unless it is found that the policy

decision is palpably arbitrary, *mala fide*, irrational or violative of the statutory provisions. If the policy decision of the Government is in the larger public interest, courts should not interfere with the same. Referring to the decision in **APM Terminals B.V. v. Union of India**, **2011 (6) SCC 756**, it was held that, it has been the consistent view that a change in policy by the Government can have an overriding effect over private treaties between the Government and a private party, if the same was in the general public interest and provided such change in policy was guided by reason.

19. In **Indian Oil Corporation Limited v. Kerala State Road Transport Corporation, (2018)12 SCC 518**, petitions had been filed seeking declaration that the diesel price hike introduced by the Indian Oil Corporation compelling the petitioners therein to pay enhanced rate than while purchasing diesel from private or other diesel bunk, was wholly arbitrary, illegal, unjust and unconstitutional. The Government of India had taken a decision to withdraw the subsidy given to bulk consumers on purchase of diesel. Consequently, the bulk consumers were required to pay more than what was being paid by the retailers. This decision of the GoI was challenged. The Apex Court held that grant of subsidy is a matter of privilege, to be extended by the Government and it cannot be claimed as of right. No writ lies for

extending or continuing the benefit of privilege in the form of concession. Subsidy is a matter of fiscal policy, which privilege can be withdrawn. Such privilege can be withdrawn at any time, is the settled proposition of law. Thus, it is always open to the GoI to take a decision to withdraw the subsidy enjoyed by the bulk consumers and it was a decision based upon the rationale to direct funds for social welfare schemes for the common man and that by grant of subsidy, the Oil Marketing Companies had suffered heavy losses. This prompted the GoI not to extend the subsidy to bulk consumers. In these circumstances, it was held that the decision is not arbitrary, discriminatory or in violation of the principles contained in Article 14 of the Constitution of India. Such policy decisions have been held to be not amenable to judicial review.

20. In **State of Rajasthan v. J.K.Udaipur Udyog Ltd, (2004) 7 SCC 673**, it has been held that exemption granted is a privilege. In fiscal matters, a concession granted by the Government to the beneficiaries cannot confer upon them a legally enforceable right against the Government to grant a concession, except to enjoy the benefits of the concession during the period of its grant. Enjoyment is a defeasible one and can be taken away in exercise of the very power under which such exemption was granted. It was observed

that an exemption, is by definition, a freedom from an obligation which the exempted is otherwise liable to discharge. It is a privilege granting an advantage not available to others. The recipient of a concession has no legally enforceable right against the Government to grant of a concession except to enjoy the benefits of the concession during the period of its grant. This right to enjoy is a defeasible one in the sense that it may be taken away in exercise of the very power under which the exemption was granted.

21. **Shree Sidhbali Steels Ltd. v. State of Uttar Pradesh, (2011) 3 SCC 193**, is a case relating to rebate that was granted under Section 49 of the Electricity Act, 1948. It has been held that rebate is a privilege granted in the form of an advantage. It could be enjoyed during the period of its grant. It is a defeasible one and is liable to be taken away or withdrawn the way in which it was granted. The rebate granted by the Government is a freedom from an obligation which the parties were otherwise liable to discharge. The rebate granted under the Act was a privilege granting an advantage which was not made available to others. It was just a concession granted by the Government so that the beneficiaries of such concessions were not required to pay the electricity tariff they were otherwise liable to pay under the Electricity Act during the period of its grant. The beneficiaries as recipients of a concession

can accept and enjoy the benefits of the concession during the period of its grant. This right to enjoy was a defensible one in the sense that it was liable to be taken away or withdrawn in exercise of the very power under which the exemption was granted.

22. In **Ayurved Shastra Seva Mandal v. Union of India, (2013) 16 SCC 696** it has been held that the privilege granted to candidates in the matter of education cannot be transformed into a right.

23. In **Bannari Amman Sugars Ltd. v. Commercial Tax Officer, 2005(1) SCC 625**, the doctrine of promissory estoppel has been explained. To invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and bald expressions without any supporting material to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government, would not be sufficient to press into aid the doctrine. The Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of that doctrine, the Courts have to do equity and the fundamental principles of equity must for ever be

present in the mind of the Court.

24. In **Shrijee Sales Corporation v. Union of India, (1997)3 SCC 398**, it has been held that once public interest is accepted as the superior equity which can override individual equity, the principle would be applicable even in cases where a period has been indicated for operation of the promise. If there is a supervening public equity, the Government would be allowed to change its stand and has the power to withdraw from the representation made by it, which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal.

25. It is true that in **Major Saurabh Charan v. Lieutenant Governor, NCT of Delhi, (2014) 6 SCC 798**, it has been held that it is not permissible for the administration to alter the basis of admission after the admission process has started. But that is a case dealing with the children of inter State transferees, unlike in the present case where the petitioners claim right on the basis of recommendation letters given by the Chairman of VMC.

26. Even before the revised guidelines were issued, the special provisions in Part B of the guidelines only said that the category of children referred to therein would be admitted over and above the class strength except

where it is stated otherwise in the provisions itself. It does not say that the KVs are bound to give admissions to the categories of children referred to in Part B of the special provisions. The children recommended must also be otherwise eligible for admission as per the extant KVS admission guidelines. Therefore, merely because a student has a recommendation letter to his credit, would not entitle him as of right to admission in the school. Further, there are no guidelines seen issued on the basis of which recommendation letter(s) can be given by the Chairman of VMC under his discretionary quotas. It is not clear under what circumstances the recommendation letters were given to the petitioners in this case. Was it issued only because the students had access to the functionary and thus could steal a march over the other eligible candidates? To us, *prima facie*, the guidelines giving such special privileges is arbitrary because merely because a student has access to any of the functionaries conferred with the privilege of granting discretionary quotas, cannot claim as of right to be admitted in the KVs.

27. As held in **Hindustan Development Corporation** (*Supra*), a person who bases his claim on the doctrine of legitimate expectation, must first satisfy that there is a foundation for the same and thus has a *locus standi* to make such a claim. The case of the petitioner in W.P.(C)No.15261/2022 in

the writ petition reads -

> *"3. ..... Since the petitioner was recommended in the Chairman's quota by the District Collector, the petitioner did not apply to any other school. In all schools, by now date of application has ended. The petitioner had a legitimate expectation that he would invariably be admitted to the 3rd respondent's school. ....."*

This claim cannot and does not fall under the doctrine of legitimate expectation as explained by the Apex Court in the aforesaid cases.

28. It was submitted that the revised guidelines contain no explanation or justification for withdrawing the privilege granted to the Chairman of VMC and hence it is an arbitrary exercise of power. It was submitted that public orders cannot be construed in the light of subsequent explanations given. In support of this argument, reference was made to the decisions in **Commissioner of Police v. Gordhandas Bhanji, 1952 SCR 135** and **Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405**. Ext.P5 does not contain an explanation or reason for revising the guidelines and withdrawing the privilege. It is only in the counter affidavit, an explanation has been given as to the necessity for revising the guidelines. According to the petitioners, the NEP, 2020, had come into effect in the year 2020 itself. The guidelines of the KVS had been issued thereafter. Therefore

if the guidelines had to be in sink with the same, necessary changes/ amendments ought to have been made to well ahead of the commencement of the admission process. Without doing that, bringing changes after the admission process has started, is nothing but arbitrary and illegal, argues the petitioner.

29. Ext.P5 is an internal communication given by the KVS to its officials. The authorities to whom it was addressed was bound to comply with the directions contained in the same and so there was the necessity to give any explanation for the change brought in. Therefore, it is not a case of explanation being given subsequently justifying Ext.P5 order.

30. Further, only if a person has a right that can be enforced, he can successfully contend that the procedure cannot be changed midway. Here the petitioners have not been able to establish any right as such to get admission merely on the basis of a letter of recommendation. The learned ASG is certainly justified in submitting that the decision to revise the discretionary quotas is a revolutionary and a bold step taken by the GoI because as per the revised guidelines, the privilege of discretionary quotas given to the Members of the Parliament has also been taken away. Therefore, it is not a case where

only a particular person's privilege has been taken away. Even if that be so, the petitioners cannot challenge the same in the light of the decisions of the Apex Court referred to hereinabove.

31. The discretionary quota admissions were admittedly being made over and above the class strength. This appears to have adversely impacted the learning process and resulted in overcrowding in the classrooms. It is also stated that because of this, the children of transferable Central Government employees were unable to get admissions in the KVs on their transfer from one place to another. The fact that the KVs are meant for children of transferable Central Government employees including defence personnel, is not disputed. Therefore, for cogent and plausible reasons, the Government changed its policy regarding discretionary quotas, which was well within its powers. Moreover, granting admission on the basis of recommendations alone, is certainly arbitrary and violative of Article 14 of the Constitution. Therefore, Ext.P5 revised guidelines based on the policy decision of the GoI cannot be interfered with by this Court.

32. It was further submitted that the petitioners believing that they would certainly get admission in the KVs, had not applied to the other schools and now they are faced with a situation that they cannot continue with

their education, which is their fundamental right. During the course of arguments, it was pointed out by the learned ASG that the petitioner in W.P.(C) No.15261/2022 has got admission in another Kendriya Vidyalaya School. It was submitted by the learned counsel for the petitioner that the said school is about 30 kms away from the residence of the child and hence it is highly inconvenient for the child to pursue his studies in the said school. Writ jurisdiction cannot be invoked to enable a student to get admission in a school of his/her choice. As far as W.P.(C)No.15520/2022 is concerned, it was pointed out that the minor child had taken TC from her earlier School, only because she was assured of an admission in the school. In the counter affidavit of the respondents as well as in the submissions made by the learned ASG, it was brought to our notice that taking a sympathetic view in the matter, the 3rd respondent Principal of the KV to which the petitioner had applied, had discussed the matter with the Principal of Girideepam Bethany School, where the child was studying prior to obtaining TC. The Principal of the said school is stated to have agreed to re-admit the child in Class II and that the said fact has also been communicated to the petitioner over telephone. That being the position, the right of both the children to education would not in any way be affected.

In these circumstances, we find that the petitioners are not entitled to the reliefs prayed for in the writ petitions. Hence, the impugned judgment is set aside and the writ appeals are allowed.

Interlocutory applications, if any pending, shall stand closed.

Sd/-

P.B.SURESH KUMAR
JUDGE

Sd/-

C.S.SUDHA
JUDGE

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